



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,136	09/12/2003	Alejandro J. Gonzalez	1 . 839-B. 03	9087

7590 06/17/2005

MALLOY & MALLOY, P.A.
Historic Coral Way
2800 S.W. Third Avenue
Miami, FL 33129

EXAMINER

LEUNG, RICHARD L

ART UNIT	PAPER NUMBER
----------	--------------

3744

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/662,136

Applicant(s)

GONZALEZ, ALEJANDRO J.

Examiner

Richard L. Leung

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-6 and 8 is/are rejected.
- 7) ☒ Claim(s) 3 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 2, 5 and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 (which depends from claim 1) of U.S. Patent No. 6430940 B1 (Gonzalez). Although the conflicting claims are not identical, they are not patentably distinct from each other because they are drawn to the same subject matter.

Regarding claim 1, Gonzalez claims in claim 11 an effects generation system operative to produce a special effects cloud, said system comprising a container containing a quantity of a cryogenic fluid (column 8, lines 62-63), said container including a fluid outlet being disposed in fluid communication with said cryogenic fluid within said container (column 8, lines 63-64), a pressurization assembly structured to maintain a substantially continuous outflow of said cryogenic fluid through said fluid outlet (column 8, lines 8-11 and 25-28), a delivery assembly operatively connected to said fluid outlet and including an outlet assembly structured to deliver said cryogenic fluid into a predetermined area (column 8, lines 12-14 and 22-23), said pressurization assembly further structured to substantially equalize fluid flow pressure to said outlet assembly (column 8, lines 25-28).

Regarding claim 2, Gonzalez further claims in claim 11 that said pressurization assembly is operatively associated with said container (column 8, lines 8-9)

Regarding claim 5, Gonzalez further claims in claim 11 that said outlet assembly includes a plurality of delivery ports (column 8, lines 22-23).

Regarding claim 6, Gonzalez further claims in claim 11 that said pressurization assembly is structured to maintain a substantially continuous outflow of said cryogenic fluid so as to substantially equalize a fluid flow pressure at each of said plurality of delivery ports (column 8, lines 25-28).

3. Claim 4 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 12 (which depends from claim 11) of U.S. Patent No. 6430940 B1 (Gonzalez). Although the conflicting claims are not

Art Unit: 3744

identical, they are not patentably distinct from each other because Gonzalez further claims in claim 12 that said container includes a vacuum chamber structured to maintain said cryogenic fluid at least at a necessary temperature to maintain its cryogenic state (column 8, line 66 to column 9, line2).

4. Claim 8 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 3 (which depends from claim 1) of U.S. Patent No. 6430940 B1 (Gonzalez). Although the conflicting claims are not identical, they are not patentably distinct from each other because Gonzalez claims in claim 3 an effects generation system operative to produce a special effects cloud, said system comprising a cryogenic fluid source including a quantity of cryogenic fluid and a fluid outlet (column 8, lines 5-7), a pressurization assembly structured to maintain a pressurized outflow of said cryogenic fluid through said fluid outlet (column 8, lines 8-11), a delivery assembly connected to said fluid outlet and structured to deliver said cryogenic fluid into a predetermined area (column 8, lines 12-14), a plurality of delivery ports in fluid flow communication with said fluid outlet and disposed in a predetermined array so as to deliver said cryogenic fluid in a defined pattern in a predetermined area (column 8, lines 22-23 and 31-34), and a quantity of reactive fluid disposed in said predetermined area in reactive proximity with said cryogenic fluid (column 8, lines 15-16).

Allowable Subject Matter

5. Claims 3 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments, filed 27 May 2005, with respect to the rejection(s) of claim(s) 2 under 35 U.S.C. 112, first paragraph have been fully considered and are persuasive in view of the amendment to the claim. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the judicially created doctrine of obviousness-type double patenting over U.S. Patent No. 6430940 B1 (Gonzalez). Accordingly, this Office Action is being made non-final to afford Applicant an opportunity to respond to the new grounds of rejection.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard L. Leung whose telephone number is 571-272-4811. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl J. Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Richard L. Leung
Examiner
Art Unit 3744


CHERYL TYLER
SUPERVISORY PATENT EXAMINER

rl